

FILE COPY



No. 487

**IN THE SUPREME COURT OF
THE UNITED STATES**

October Term 1947

**PHILIP B. FLEMING, TEMPORARY CONTROLS
ADMINISTRATOR**

vs.

W. H. HILLS

BRIEF OF THE DEFENDANT

No. 437

**IN THE SUPREME COURT OF
THE UNITED STATES**

October Term 1947

**PHILIP B. FLEMING, TEMPORARY CONTROLS
ADMINISTRATOR**

vs.

W. H. HILLS

On Certificate from the United States Circuit Court of
Appeals for the Tenth Circuit

There is no reason for us to repeat the Statement of
Facts given in the Brief of the Administrator.

Neither do we question the quotations from the Laws
and Regulations given by the Administrator in the Ap-
pendix of his Brief.

BRIEF ARGUMENT OF DEFENDANT

The OPA brought this action in the United States Dis-
trict Court for Kansas, thereby asking the court to take
jurisdiction. A court must determine the issues involved
in the action before it. It would have been proper for
the complainant to have alleged and proved, as an in-
gredient of their action a proper and legal regulation
or order which has been violated by the defendant. This
was essential. The complainant did not furnish and prove
such a fact so the lower court decided against him. The
judgment was for the defendant.

The defendant had alleged and proved that a proper
and legal order, made in every respect in conformity to

the general regulations promulgated by the OPA was in effect and the defendant lived up to this regulation. The court sustained his proof.

We contend that the court had a right to sustain the regular regulations of the OPA as against one that was in conflict thereto, and did not conform to, but was in express violation of the regular regulations. This the court did.

It was absolutely necessary for the district court to sustain some regulation or not render judgment.

Now if the district court did not have jurisdiction to determining what was a legal regulation, the United States Circuit Court of Appeals does not have that jurisdiction; and it follows that the Supreme Court of the United States does not have any jurisdiction of the subject unless it comes to the court from an appeal from the Emergency Court of Appeals. If the district court did not have the jurisdiction the jurisdiction is withdrawn from all of these courts.

ANSWERING THE QUESTIONS

(1) The district court sustained the regulations of the OPA, it did not try to question them. It has held the second rent order was a violation of the OPA regulations.

(2) It seems res judicata. It seems the district court should be commended for sustaining the regulations.

(3) The Circuit Court of Appeals would be under obligation to support the OPA regulations, and hence not to render judgment against Hills. The OPA Regulations were observed by Hills. He did not obey an order made contrary to the regulations, and in violation of the regulations. He did obey an order made in conformity to the regulations.

GEO. D. RATHBUN, Attorney for Defendant